

THE INIGUEZ LAW FIRM, P.C.
MIGUEL A. INIGUEZ, SBN 228365
MIGUEL@INIGUEZLAW.COM
11690 PACIFIC AVENUE, SUITE 110
FONTANA, CA 92337
Telephone: (909) 581-7348
Facsimile: (909) 581-7534

THE SEIDEMAN LAW FIRM, P.C.
GREGORY M. FITZGERALD, SBN 153082
GFITZGERALD@SEIDLAW.COM
SHANNON M. BRODERICK, SBN 247993
SBRODERICK@SEIDLAW.COM
WILLIAM J. CAMPBELL, SBN 248729
WCAMPBELL@SEIDLAW.COM
11690 PACIFIC AVENUE, SUITE 110
FONTANA, CA 92337
Telephone: (909) 581-7348
Facsimile: (909) 581-7534

ATTORNEYS FOR PLAINTIFF: FRANCO B. BRESSANUTTI AND
IRENE BRESSANUTTI

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FRANCO B. BRESSANUTTI,) Case No.: 10cv1922-MMA
IRENE BRESSANUTTI,)
) **NOTICE OF MOTION FOR ORDER**
) **REMANDING THE CASE TO**
) **STATE COURT AND FOR AN**
) **ORDER FOR PAYMENT OF COSTS**
) **AND ATTORNEY FEES**
PLAINTIFF,)
VS.)

) Date: November 16, 2010
) Time: 2:30p.m.
ADVANTA BANK, PHILLIPS AND) Place: Courtroom 5
COHEN ASSOCIATES, LTD.,) Judge: Hon. Michael M. Anello
)
DOES 1 THROUGH 100,)
)
INCLUSIVE,)
)
DEFENDANT)

1 Notice is hereby given that Plaintiffs herein will
2 move the above entitled court, located at 940 Front
3 Street, San Diego, CA 92101, on November 16, 2010 at
4 2:30p.m. in Courtroom 5 for an order remanding the
5 above matter to state court. Plaintiffs will also seek
6 an order requiring Defendants Phillips and Cohen
7 Associates, LTD. to pay costs and attorney fees.

8 The motion will be made on the basis that the
9 notice of removal is defective. (28 U.S.C. 1446, 28
10 U.S.C. 1447). The motion will also be made based on
11 abstention principles. (Quackenbush v. Allstate Ins.
12 Co., (1996) 517 U.S. 706, 730-731).

13 The motion will be based on the points and
14 authorities filed herewith, the declaration of William
15 James Campbell, the file herein and on such other
16 information that may develop at the hearing.

17
18 **Motion to Remand and for Costs On Grounds of Defective**
19 **Removal and Abstention**
20

21
22 1. Plaintiffs are Franco B. Bressanutti and Irene
23 Bressanutti; Defendants are Advanta Bank and Phillips
24 and Cohen Associates, LTD.

25 2. On July 30, 2010 Plaintiff sued Defendants Advanta
26 bank and Phillips and Cohen Associates, LTD. for
27 Violation of the California Rosenthal Fair Debt
28 Collections Practices Act and the Federal Fair Debt
Collections Practices Act.

1 3.The Lawsuit was originally filed in the Superior
2 Court of California County of San Diego and was given
3 case number 37-2010-00097041-CU-MC-CTL.

4 4.Defendant Phillips & Cohen Associates, LTD. was
5 served on August 13, 2010. (See Exhibit "A" attached to
6 this motion).

7 5.Defendant Advanta Bank was served on August 13,
8 2010. (See Exhibit "B" attached to this motion).

9 6.On September 13, 2010 Defendant Phillips and Cohen
10 Associates, LTD. served the notice on Plaintiff's
11 counsel. However, the notice was not filed with the
12 court until September 14, 2010 pursuant to the courts
13 email notice sent September 16, 2010.

14 7.In Defendant Phillips and Cohen Associates, LTD.'s
15 notice of removal Defendant Phillips and Cohen
16 Associates, LTD. stated "Defendant Phillips & Cohen
17 Associates, LTD. is informed and believes that the
18 service on Defendant Advanta Bank Corp. defective and
19 the FDIC has not been served with the complaint in this
20 matter."

21 8.Not only was Defendant Advanta Bank served by
22 Plaintiff's counsel, William James Campbell, spoke to
23 Jennan Shemise, Esq. senior attorney for the FDIC legal
24 Division on September 9, 2010. Jennan Shemise made
25 contact with William James Campbell because she had the
26 complaint and wanted to discuss settlement.
27
28

1 9. The Notice of Removal is defective under 28 U.S.C.
2 §1446 because one of the individually named Defendant,
3 Advanta Bank have not joined in the removal.

4 10. The Notice of Removal is defective because
5 Defendant Phillips and Cohen Associates, LTD. filed the
6 Notice of Removal on Plaintiff 31 days after the
7 original complaint was served on Defendant Phillips and
8 Cohen Associates, LTD.

9 11. The State of California has a vital state
10 interest in both enforcing the Rosenthal Fair Debt
11 Collections Practices Act and enforcing Contracts
12 entered into in the State of California.

13 12. The Federal Fair Debt Collections Practices Act
14 itself recognizes the states interest by allowing each
15 state to adopt its own Debt Collection Regulations.
16 (See 15 U.S.C. §1692n).

17 13. Removal would result in needless intervention
18 by the federal courts and needless conflict with the
19 State of California's administration of its own
20 pervasive regulatory scheme for regulating debt
21 collectors.

22 14. The Court should remand this case back to the
23 California Superior Court on the grounds that all the
24 Defendants were not properly joined, the Notice of
25 Removal was filed more than thirty days after Defendant
26 Philips and Cohen Associates, LTD. was personally
27 removed.

1 served the original complaint, and based on abstention
2 principles.

3 15. Plaintiffs further move the Court to order the
4 payment to Plaintiff by the removing Defendants of all
5 costs, including attorneys fees, incurred by reason of
6 the removal proceeding in the amount of \$600.00.

7
8 Wherefore, the Plaintiff's pray that this case be
9 remanded to the Superior Court of the State of
10 California, County of San Diego, in accordance with the
11 requirements of Title 28, Section 1447(c), and for an
12 order awarding Plaintiff's their costs, including
13 attorney's fees, incurred by reason of the removal
14 proceeding.

15
16
17 Dated: September 17, 2010 The Iniguez Law Firm, P.C.
18
19

20 s/ William J. Campbell
21 William J. Campbell
22 Attorney for Plaintiff
23 Franco B. Brassanutti
24 and Irene Brassenutti
25
26
27
28